
(2010) 07 AHC CK 0252
In the Allahabad High Court
Case No : Special Appeal No. 1007 of 2010

Deoki Verma

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 28-07-2010

Acts Referred:

Uttar Pradesh Intermediate Education Act, 1921 — Chapter 2, 7(2A)
Uttar Pradesh Secondary Education Service Selection Board Rules, 1998 — Rule 10(c), 14

Citation : (2010) 07 AHC CK 0252

Hon'ble Judges : F.I.Rebello, CJ and A.P.Sahi, J

Final Decision : Dismissed

Judgement

Ferdino Inacio Rebello, C.J. and A.P. Sahi, JJ.—This appeal is by an Assistant Teacher of the primary section of an Intermediate College namely, Swamibagh Uchchattar Madhyamik Vidyalaya, Dayal Bagh, Agra, governed by the provisions of U.P. Intermediate Education Act, 1921. The dispute is in relation to the claim of promotion by the appellant as against the respondent No.5 Dr. Suman Birla in the L.T. grade. The appellant, upon a resolution of the Committee of Management which is the appointing authority under the Regulations framed under the 1921 Act, succeeded in getting approval from the DIOS but on a representation/complaint filed by the respondent No.5, the matter was taken up by the Joint Director of Education who reversed the decision in favour of Respondent No.5. Aggrieved, the appellant filed a writ petition giving rise to the present appeal which has been dismissed by a learned single Judge holding that the respondent No.5 was entitled for promotion and, therefore, refused to interfere with the order of the Joint Director of Education dated 20.5.2009.

2. The facts in detail have already been traversed by the learned single Judge but for the purpose of this appeal, a mention of the underlying facts would be necessary. The appellant Deoki Verma was appointed as an Assistant Teacher in the primary section of the institution on 1.7.1989 whereas the respondent Suman Birla was appointed on 23.8.1993. The qualification of the appellant is a

Post Graduate Degree in Economics and she has passed her Graduation with the subjects of General Hindi, Hindi Literature and Economics. The respondent No.5 is a Post Graduate in Sanskrit and she has passed her Graduation of which one of the subjects is English. The appellant is senior to the respondent No.5. For the purpose of promotion to the next higher grade i.e. the L.T. Grade, the regulations framed under the 1921 Act make a provision that 25% of the posts in the L.T. grade shall be filled by way of promotion from amongst the teachers qualified and eligible to be appointed in a substantive capacity in a primary section of the institution. This provision, which is contained as Chapter II Regulation 7 (2A) of the U.P. Intermediate Education Act, 1921 quoted below:

3. This provision was introduced by way of an amendment through a notification issued by the Board dated 26.2.2003. The institutions, which are governed by the provisions of the 1921 Act and are recognized and also aided, are also under the provisions of the U.P. Secondary Education Service Commission Act, 1982 which is a body constituted for the purposes of selection and appointment of teachers in the L.T. grade, the lecturer grade and the head of the institution. The Act was introduced in order to ensure free and fair selections and rules have been framed under the said Act for the said purpose. In order to give effect to the provisions of the 1921 Act, the said rules further prescribe the procedure for recruitment and for the said purpose, the U.P. Secondary Education Services Selection Board Rules 1998 were appropriately amended for the procedure to be followed for such promotions as involved in the present matter vide notification dated 25.11.2005. The said Rule 10 (c) is quoted below:

10. (c) Teachers of trained graduates grade

(i) 100 per cent by direct recruitment except the category of institutions mentioned below in 2(ii);

(ii) Those Intermediate Colleges and High Schools in which teachers or attached primary section are getting salary under provisions of U.P. High Schools and Intermediate Colleges (Payment of Salaries of Teachers and other Employees) Act, 1971, 75 per cent posts shall be filled by direct recruitment and the remaining 25 per cent posts shall be filled by promotion from amongst those trained section graduate teachers of attached primary section who have completed 5 years of satisfactory service:

The criteria for promotion is defined in Rule 14(3) thereof which is seniority subject to rejection of unfit.

4. The Committee of Management appears to have proceeded to consider the said claim of promotion of the appellant and the respondent No.5 simultaneously and in its meeting dated 26.10.2008 proposed the consideration of the candidature of both the teachers. A copy of the said resolution has been brought on record which recites that one post was available for being filled up by promotion as there was a doubt about the availability of any other vacancy and also as to whether seniority alone should be the criteria. However, the Committee

resolved that if seniority is the dominant factor then it would be appropriate to promote the appellant Deoki Verma. At the same time, the Committee indicated that in view of the aforesaid provisions if the choice is to be made with regard to the vacancy of the post in a particular subject then, in view of the vacancy that was caused in the institution, the respondent No.5 can be considered for the post even though she is junior to the appellant.

5. The genesis of the dispute, therefore, lay in a choice expressed by the Management in the said resolution which was forwarded to the District Inspector of Schools. The District Inspector of Schools vide order dated 2.1.2009, without discussing the contents of the resolution, straightway approved the appointment of the appellant by way of promotion in the L.T. grade. The appellant, accordingly, joined in the institution against the said post on 15.1.2009.

6. The respondent no. 5 raised a dispute and in the absence of the redressal of her grievances, she approached this Court by filing a writ petition No. 1503 of 2009 which was disposed of on 4.2.2009 with a direction to decide her representation. The learned single Judge passed the order after noticing the nature of the dispute raised and came to the conclusion that it would not be appropriate to interfere with the order of approval dated 2.1.2009 at that stage as the claim raised by the appellant required verification of factual aspects of the matter. Accordingly, the Court directed the respondent No.5 herein to approach the Joint Director of education and ventilate her grievances, who shall proceed to decide the claim of the respondent No.5 after giving opportunity and notice to the Management as well as the appellant.

7. The Joint Director of Education, after sifting the facts, came to the conclusion that the institution required the service of the teacher of L.T. grade on account of the retirement of one Mr. Padam Singh, who was teaching the subject of English while holding the said post. The Joint Director further found that the District Inspector of Schools has not examined this aspect of the matter and in view of the fact that there was no other teacher duly qualified to teach English, it was the respondent No.5, who was entitled for being promoted on the post in question. It was further found that the appellant did not have the minimum educational qualification as provided for under the Rules namely that she was not a Graduate in English and, therefore, her proposal by the Committee of Management as accepted by the District Inspector of Schools was illegal.

8. It is the said order passed by the Joint Director of Education which was challenged by the appellant and the learned single Judge upheld the same holding that it was necessary for the candidate to possess the qualification of the subject for which the teacher was required keeping in view the vacancy that had arisen and, therefore, the appellant's proposal and approval was not in consonance with Rules. It was, therefore, held that even though the appellant was senior yet she was not qualified to hold the post keeping in view her eligibility and suitability.

9. Sri Anil Bhushan has been heard for the appellant, the learned Standing Counsel for the respondent Nos. 1, 2 and 3 and Sri K.P. Shukla for the respondent No.5. Notice stands waived so far as the respondent No.4 is concerned in view of the nature of the resolution passed by it and further that the said respondent has not chosen to question the correctness of the judgment of the learned single Judge. Accordingly, with the consent of learned counsel for the represented parties, we proceed to dispose of the appeal under the Rules of the Court.

10. Sri Anil Bhushan contends that the appellant is fully qualified and eligible to be promoted inasmuch as for the purpose of being considered for promotion under the aforesaid Rules reference should be had to the qualifications as prescribed under the 1998 Rules which does not require a teacher seeking promotion in the L.T. Grade to possess the educational qualification in the concerned subject. He submits that selections in the L.T. Grade are made not subjectwise inasmuch as there is no such sanction by any authority of a post in relation to a particular subject. He submits that the selections by way of direct recruitment also are made group wise. For this, Sri Bhushan invites the attention of the Court to the explanation appended to Rule 11 of the 1998 Rules. He submits that the selection by the Board is made by bifurcating the selection in 8 groups. Group No. (h) indicates that this general group would consist of the subjects not covered in any of the foregoing groups. He, therefore, submits that a candidate, who is a Graduate in any subject, can be appointed as a teacher in the L.T. grade under the said general group. He points out that the subject of English is included in the general group and, therefore, no special qualification of having Graduate in English is required for the purpose of promotion as an L.T. grade teacher to teach English.

11. As a corollary to the aforesaid submissions, he further invites the attention of the Court to subRule (2) (a) of Rule 11 to contend that the subject wise vacancies are a consideration for appointment only in the highest grade i.e. the Lecturers grade and not in the L.T. grade (Trained Graduate Grade). He contends that the vacancies in the L.T. grade have to be intimated groupwise and keeping in view the aforesaid provision, it should be presumed that the same procedure should be available for consideration and appointment by way of promotion. On this analogy, it is contended that even if the appellant was not a Graduate in English, she was not disqualified and the reasons given by the Joint Director of Education as upheld by the learned single Judge cannot be approved of.

12. He further invites the attention of the Court to the Rules to contend that prior to 1.7.1983, there was a requirement to possess the qualification in the concerned subject even in the L.T. grade but with an amendment in the Rules that were promulgated on 1.7.1983, the said requirement of the educational qualification in the concerned subject was done away with. To support his submission, Shri Bhushan relied on the Division Bench judgment in Chandra Pratap Singh Vs. Madhav Sharan Tripathi and others, (1989) 1 UPLBEC 361.

13. The appellant, therefore, accordingly to the learned counsel was justifiably proposed by the Committee of Management, being the senior most teacher of the primary section, and the District Inspector of Schools being the competent authority was justified in approving the same.

14. On the other hand, learned counsel for the respondent No.5 submits that the post fell vacant on account of a teacher, who was teaching the subject of English. The requirement under the procedural rules of 1998 is of a qualification for the post as prescribed under Chapter II Regulation I of the Regulations framed under the 1921 Act, Rule 5 of 1998 Rules read with Rule 14 that refers to the qualifications prescribed in Appendix A to the Schedule of the 1921 Act. He submits a conjoint reading of all these provisions, read with the proviso (ii) Rule 10 (c) of the 1998 Rules would leave no room for doubt that a candidate apart from being senior has also to be suitable and eligible for the post against which the consideration has to be made for promotion. In essence, his contention is that the qualification prescribed under the 1921 Act do not stand waived by virtue of the amendment which was brought about on 1.7.1983 and the suitability and the eligibility of the candidate has to be seen qua the nature of the vacancy, the requirement of the teacher in the subject concerned and its assessment by the Committee of Management. On the strength of the aforesaid submissions, he contends that the finding and the reasons recorded by the learned single Judge do not warrant any interference in appeal.

15. The learned Standing Counsel has also invited the attention of the Court to various provisions and he submits that the order passed by the Joint Director of Education is a fall out of the direction issued by this Court which has been construed to be in accordance with law by the learned single Judge.

16. Having considered the aforesaid submissions, it is undisputed that the post is of L.T. grade which had fallen vacant on account of the retirement of a teacher, who was teaching the subject of English in the institution. The proposal sent by the Committee of Management through its resolution dated 15.11.2008 was not an absolute proposal in favour of the appellant. It was, to put it exactly, a twin proposal reflecting the seniority of the appellant and at the same time the eligibility of the respondent No.5 qua the nature of the vacancy that had occurred in the institution. The District Inspector of Schools did not examine the said aspect of the matter.

17. We have perused the Rules that have been placed before us and noticed herein above. The procedure for promotion is provided for in Rules 10 (c) read with Rule 14 of the U.P. Secondary Education Service Commission Rules 1998. These Rules act in aid of the provisions that have been included in Regulation 7 (2A) of the U.P. Intermediate Education Act, 1921. Rule 5 of the 1998 Rules clearly prescribes that a teacher has to be qualified in accordance with the qualifications mentioned in Chapter II Regulation I which in turn refers to Appendix A of the Regulations. The qualification for L.T. grade (Trained Graduate Teacher) to teach classes IX and X for the subject of English is B.A. with English

as one of the subjects. It is true that the 1998 Rules carve out a distinction between subject wise selection and group wise selection by way of direct recruitment and for that the qualification in the subject concerned is a must so far as the Lecturers are concerned. There is, however a distinction with regard to trained graduate teachers, who are required to be selected group wise. To that extent, the submission of Sri Bhushan cannot be sidelined.

18. The question that arises and which has been considered by the learned single Judge is as to the requirement of the qualification visavis the nature of the vacancy and the post occupied by the incumbent. Coupled with this, it has also to be seen as to whether the requirement is in the interest of the institution and the students at large. This Court would, therefore, approach the said issue applying the rule of purposive interpretation in order to fulfil the objects of the Act without violating the mandate of the Rules.

19. It has been brought on record by the respondent that one Shikha Dubey was already teaching the English subject but the same has been controverted by saying that Shikha Dubey does not hold the qualification of a English teacher. The institution, therefore, appears to have found the necessity of an English teacher and it is for this reason that the Committee passed a resolution indicating the nature of the vacancy that had arisen in the institution. The intention, therefore, of the management was to indicate the requirement of the institution keeping in view the interest of the students visavis the subject of English.

20. This appears to be a reasonable, pragmatic and purposive approach inasmuch as the vacancy was caused on account of the retirement of a teacher, who was teaching English. The other aspect of the matter is that the resolution nowhere says that there is no requirement of another teacher to teach English. It can, therefore, be reasonably presumed that even though Shikha Dubey is alleged to be one of the teachers teaching English, yet the institution requires a teacher in the said grade for catering to the need of the students and in view of the undisputed fact that the earlier incumbent was also teaching the same subject.

21. The aforesaid intention of the Committee of Management as reflected in the resolution was not even noticed by the District Inspector of Schools when he granted approval to the claim of the appellant on 2.1.2009. There is another factual aspect which has been brought by the appellant herself on record and which would substantiate the nature of the requirement and the procedure to be followed. We are mentioning those facts as the same does not find any discussion even though the said fact was available before the learned single Judge and the Joint Director of Education.

22. The institution was recognized on 9.9.1969 and the subjects in which recognition was granted are spelled out in the said recognition order which is on the record. One of the subjects is English and the special conditions of the said

recognition order, as contained in clause 4 (Ka) thereof, clearly spell out that the teachers, who are to be appointed with regard to the said subject, have to be duly qualified as prescribed by the Board. The prescription of such qualification as pointed out above, is contained in the regulations framed by the Board and appended as Appendix A to the Schedule. It is, thus, clear that the order of recognition also impels the Committee to appoint an eligible candidate. The criteria under Rule 14 is seniority subject to rejection of unfit which has also to be observed by the Committee. In a case like the present one, the fitness to teach the required subject for which appointment is to be made will have to be kept in mind.

23. Not only this, the Post creation order dated 23.3.1979, which brought the post in question under the U.P. High School and Intermediate (Payment of Salary to the Teachers and other Employees) Act, 1971 (Act No.24 of 1971), also mentions the same terms & conditions as in the recognition order. The said document is also on record. The aforesaid recognition and Post Graduation Order has to be reconciled with the suitability and the eligibility of a candidate claiming promotion under Rule 10 (c) of the 1998 Rules. To this extent, the argument of Sri Shukla has sufficient force and, therefore, in view of the requirement of an English Teacher in the institution, in our opinion the learned single Judge was justified in inferring that the candidate should be possessed of the qualification in the subject of English. The appellant even though was senior, in our opinion, could have been considered by virtue of her seniority provided she could cater to the specific requirement of a teacher in English.

24. There has to be a caveat to be kept in mind in appropriate cases, in order to avoid any arbitrary exercise of such freedom of choice by the Committee of Management, so that the Rule of seniority is not given a go-by while striking a balance between the rule of seniority protecting the legitimate right of an eligible candidate and the paramount interest of the children to be taught by a qualified teacher. For this, the Committee of Management while passing a resolution and the authorities while approving such an appointment will have to apply their mind keeping in view the nature of the requirement of the institution vis-à-vis the subject to be taught so that the rule of seniority is not blatantly violated. We, therefore, approve of the reasoning given by the learned single Judge that working or having an experience in the concerned subject for appointment as a L.T. Grade teacher be construed only in accordance with Rules without much insistence thereon, keeping in view the individual requirement of the institution. The Management, therefore, may not have a free hand in bypassing any genuine claim of promotion which may be otherwise covered and protected under the Rules.

25. In view of the reasons given herein above and further in view of the subsequent developments in the legislation relating to promotion on the post of L.T. grade as noticed by us, the decision in the case of Chandra Pratap Singh (supra) as relied upon by the learned counsel for the appellant would not bind us

while approving the view of the learned single Judge.

26. The appeal is, accordingly, dismissed with no order as to costs.

(F.I. Rebello, C.J.)